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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,124

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Linda Greensmith

CyRx012

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05/08/2009

ROPES & GRAY LLP

PATENT DOCKETING 39/361

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EXAMINER

STONE, CHRISTOPHER R

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

05/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,124

Applicant(s)

GREENSMITH ET AL.

Examiner

CHRISTOPHER R. STONE

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicants' arguments, filed February 10, 2009, have been fully considered but are moot in view of the new grounds of rejection below. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Election/Restrictions

Applicant alleges that the full scope of claims 6-11, including the genus of neurodegenerative disease of the central nervous system share a unifying technical feature and thus the full scope should be examined. This is found unpersuasive because the species of neurodegenerative diseases of the central nervous system have differing special technical features including mechanisms and clinical effects (see p. 6 of the Restriction Requirement, mailed September 24, 2008).

Status of Claims

Claim 6-11 are pending and under examination. Amyotrophic lateral sclerosis (ALS) is the elected species of neurodegenerative disease of the central nervous system currently under examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmar et al (Experimental Neurology, Vol. 176, p. 87-97, 2002) in view of Bruening et al (Journal of Neurochemistry, 72(2), p. 694-699, 1999).

Claims 6-11 are drawn to a method of treating ALS comprising administering (+)-R-N-[2-hydroxy-3-(1-piperidiny)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride citrate or (+)-R-N-[2-hydroxy-3-(1-piperidiny)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride.

Kalmar et al teaches that (+)-R-N-[2-hydroxy-3-(1-piperidiny)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride citrate (BRX-220) induces the expression of heat shock protein 70 (hsp70) and thus increases motor neuron and functional motor unit survival following axotomy-induced cell death in neonatal rats (abstract). Heat shock proteins, including hsp70, are further taught to provide cytoprotection of motor neurons (p. 87, right column, 1st paragraph). Kalmar et al does not teach a method of treating amyotrophic lateral sclerosis (ALS) comprising administering BRX-220.

Bruening et al teaches that up-regulation of hsp70 prolongs the survivability of motor neurons in an in vitro cell line ALS model (abstract).

Therefore it would have been prima facie obvious to one of ordinary skill in the art at the time of the instantly claimed invention to practice a method of treating a patient having ALS comprising administering BRX-220, since the compound was known to increase the expression of hsp70, which was known prolong the survivability of motor neurons in an ALS model, thus resulting in the practice of the instantly claimed invention with a reasonable expectation of success. Additionally, it would have been prima facie obvious to one of ordinary skill in the art at the time of the instantly claimed invention to use (+)-R-N-[2-hydroxy-3-(1-piperidinyl)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride, since the chloride form would have been reasonably expected to have the same or substantially the same therapeutic benefit as the chloride citrate form.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER R. STONE whose telephone number is (571)270-3494. The examiner can normally be reached on Monday-Thursday, 7:30am-4:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Patricia A. Duffy/

Primary Examiner, Art Unit 1645